

withdraw our signatures before the material could be inserted.

It was the effort to insert it, the threat to insert it which was transmitted to Senator WARNER and transmitted to me through him and through Congressman SKELTON. This is not an effort on the part of Chairman HUNTER, by the way. As I understand it, it is the Republican leadership in the House that is determined to find a way to insert material into the conference report after the signature sheets have been signed. That is what I know about it.

Senator WARNER was so disturbed about it, I was so disturbed about it, we decided we were not going to take a chance. We cannot risk this.

Mr. GRAHAM. If the Senator will yield, I wish every American knew what was in the Defense authorization bill. In the Defense authorization bill are provisions to allow guard members and reservists to get health care for themselves and their families. They need it now more than ever. They are authorizing bonus programs for people who are serving worldwide now who are overtasked and underpaid.

To take this bill that will authorize much-needed relief to the troops in the field, that will keep our equipment modern, will allow us to aggressively deal with the war on terror, capture the moral high ground with the McCain language, do the habeas reform package we worked on—to have that come down by inserting something after the fact is a low blow. It will eat away at the heart of this body.

Mr. LEVIN. I thank my dear friend from South Carolina.

It is an effort we cannot allow to succeed. We are in bipartisan agreement on this issue. It is the deepest form of process where we must be able to rely upon each other's commitment and signature. We cannot let that shake. There are all kinds of differences in this Senate. Sometimes between Democrats and Republicans, sometimes between Democrats and Democrats, between Republicans and Republicans. There are differences between us and other Members of the Senate. When a signature is affixed, when a conference report is signed, we cannot possibly contemplate any change in that conference report even if we agree with it.

By the way, as the Senator from South Carolina said, I believe I am in agreement with the principle of the material which they seek to add. I know Senator WARNER told me he is in agreement with it in principle. It is bedrock principles. You do not go deeper than this.

We also have a rule—I know the Presiding Officer is focused on the issue I want to spend 1 minute on—we have a rule relative to legislating on appropriations, which the Senator made reference to in his remarks. We also have rule XXVIII which has to do with material in a conference report which is out of scope. That rule was abided by so that if anyone ever made a point of

order that material in a conference report was out of scope, if the Presiding Officer ruled, the body would not overrule the Presiding Officer.

But we made a mistake in the early 1990s when we overruled the Chair. There is material added to conference reports all the time, by the way, which has the agreement of conferees, which is out of scope that has the agreement of conferees. It might not have the agreement of everyone in the body, but everyone in the conference report agrees to it. That happens all the time. But what never happened until that one moment in the early 1990s, a point of order was made that there was material out of scope in a conference report and the point of order was sustained by the Chair. The Chair was overridden. That created havoc around here. So much so that a few years later we restored the rule and we wiped out the precedent which was created by overruling the Chair.

That is what the issue is in the defense appropriations bill. That is what this issue is going to be. That is different from legislating on an appropriations bill. Forgive me for getting into the details, but I spent a few days studying the difference and I don't want to waste my effort the last few days to try to understand this distinction. The issue on the appropriations bill, since all of us are friends and we are sitting here on a Saturday evening talking to each other this way, the difference on the appropriations bill and not legislating—I forget the number of the rule, but is not rule XXVIII—there is a different rule from the one that is at issue on defense appropriations.

The issue on the defense appropriations bill is whether we would overrule the Chair who will rule that the Arctic drilling issue is out of scope and out of order, and whether we are then going to override that ruling and put us back in the same morass we were in in the early 1990s, which caused us a few years later to reverse that precedent, undo that terrible precedent which actually made our rules into mush. We cannot have a rule which sometimes applies and sometimes does not, we override it every other day and restore it every other day. We cannot operate that way and hold our heads up as being legislators.

I thank my Chair and my friends for their patience. Let me close by confirming what the Senator from South Carolina said about the importance of the bill. It increases pay by 3.1 percent, which is half a percent higher than inflation. We have been fighting for that a long time. It increases the death gratuity to all active-duty deaths from \$12,000 to \$100,000, retroactive to the beginning of Operation Enduring Freedom. It authorizes a new special pay of \$435 a month during hospitalization. It authorizes new leave for up to 21 days when adopting a child. We can go on and on. The Senator from South Carolina mentioned a few of them and my friend from Alabama knows this be-

cause he works hard on these issues, too.

We are trying to put items in here in this bill which are good for the troops, good for their families, good for the Nation, good for our security. We cannot watch this effort go down the drain after it was such a tremendous effort made to finish this bill. We set a record, folks. We had the shortest period of time to do an authorization bill and we had the record number of amendments that we were able to resolve. We set two records on this bill. Those records go down the drain unless the House leadership decides they are not going to try to do something that, as far as I know, has never been done before, which is to insert material in a bill somehow after the signature sheets have been signed.

There is a process. If the bill goes to the House and they want to refer it back to conference to consider something, in scope or out of scope, that is their right. But when this threat came that they were looking for a way to insert other matter into this conference report, after we had signed the sheets, Senator WARNER—I cannot pay enough tribute to Senator WARNER—is taking a very strong stand against the leader of his own party and the House of Representatives. I commend him for it. I hope the leadership of the House will relent and allow us to move forward with this important bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I will follow up on that. I think the House leadership and many on this side do feel the language would be good for the country and it is the right thing to do. And if everybody agrees, a lot of things happen around here. But if Senator LEVIN and Senator WARNER have concluded they do not want to discuss any additional additions, it is not going to happen; it is just not going to happen. Unanimously, if anybody agreed to add something, something that everybody likes, maybe it could occur. Sometimes one side has to push a little harder to make sure the other side understands how strongly they feel about it. But at some point, if Senators WARNER and LEVIN do not agree to this alteration, it is not going to be in the bill.

So as a legal principle, I know they used to always say: There ain't no harm in asking. So they have tried. But I am not sure it will work if we are not going to see their support for it.

ABU GHRAIB

Mr. SESSIONS. Mr. President, I will say something about Senator REID's, the Democratic leader's, reference to Abu Ghraib, suggesting that this bill, the legislation in this Defense bill has been held up perhaps because nobody wants to do anything about what has been going on in Abu Ghraib. Once again, it deeply concerns me. Once again, we are having the suggestion, if

not a plain statement, that we need to pass legislation and we need to have congressional hearings to stop things such as what occurred in Abu Ghraib.

I was a member of the Armed Services Committee. I am a member of the Judiciary Committee. We have had about 20 hearings on Abu Ghraib. But do you know how we found out about Abu Ghraib? We found out about it at a press briefing in Baghdad by a U.S. Army general or colonel who said they had reports of abuse at Abu Ghraib and they were taking steps to investigate it. And they did so. They found people had violated the law. They prosecuted them. A number of them are in jail this very day.

We did not need to pass one single law for that to happen because it was in violation of military standards. In fact, none of the mistreatment of prisoners at Abu Ghraib had to do with trying to interrogate them. These people were not interrogators. They were prison guards, manning the prison at the graveyard shift, who lost their discipline, abused those prisoners, and had no real excuse for it. As one of them said, Smith—I believe he was a sergeant—he said: We all knew there would be hell to pay if anybody found out what we did. It was not approved. We were not ordered to do it. It was not part of our military standard and training.

I remember, very vividly, during that time that an African-American colonel in combat, as soldiers were taking hostile fire—they captured someone, one of the terrorists or bad guys—and he fired a gun beside his head to frighten him and to get him to tell some information. There was a life-and-death matter for his troops. They drummed him out of the service. He never touched the guy. He never hurt him. It was a moment of passion and intense feeling and reaction to being in a life-and-death struggle. He is out of the military even though he had a quite distinguished career.

Our military does not approve of abusing and torturing prisoners. In fact, we have a statute that defines torture, and they have worked hard to stay within it. People who do not stay within it get prosecuted. Now, we have ideas to go further, and that has been put as a part of this bill, and it is going to become law. I hope it doesn't go too far. But we have never approved of the kinds of things that went on in Abu Ghraib. We have never approved of torture. We have a statute, passed by this Congress, that prohibits torture by the military or anyone else. We do not allow that. It is not part of our standards as a nation. But to say there can never be any stress on prisoners who have great intelligence, and who are threats to America, I don't think has been consistent with the law of warfare.

I will note, parenthetically, that it became quite clear, as went through our hearings, that the Geneva Conventions, which protect soldiers in lawful

combat—those protections do not apply to these prisoners. They do not wear uniforms. They do not operate on behalf of a state, a legitimate nation state, even a quasi-legitimate nation state. They do not adhere to standards of behavior. They do not carry their guns openly and their weapons openly. They sneak around and murder women and children, innocent civilians, contrary to the laws of warfare. Therefore, they do not gain the protections of the Geneva Conventions. But they are protected against torture, and they are entitled to that protection. They should be granted it. And if anybody violates those standards, they are prosecuted by the U.S. military.

I think the military has taken far too much abuse on this. They did a huge study of Guantanamo, Gitmo. I have been there twice. I know the standards those guards operate under. They have a phrase they greet each other with when they see each other on the base, one soldier to another. They say: Honor bound. And when they see you, they say: Honor bound, sir. They have high standards. They found three abuse cases, most minor, that were discovered after a review down there, and disciplinary action was taken concerning those. But they are not being mistreated every day, abused or tortured. I reject that.

PATRIOT ACT

Mr. SESSIONS. Mr. President, I also say this. I am not aware of a single proponent of the PATRIOT Act who has accused any Member on the other side, or any Member who opposes the PATRIOT Act, of being unpatriotic. Where did that come from? I would like to search the RECORD. I would like to see that. I do not think it has occurred. I have not heard anybody over here say that. We say: You are wrong. We say you are making a mistake, that you ought to reconsider, you ought to study the act and see that it does not threaten our liberties, that it is consistent with our constitutional protections this great Nation provides.

If you do not pass it, I will repeat, this legislation will lapse as of December 31, and it will place our Nation at greater risk. There is no doubt about that. I would repeat, again, it is stunningly surprising to me that we end up, after the bill passed here unanimously in the Senate, unanimously in the Judiciary Committee, and it went to conference with the House of Representatives. At conference, most of the disagreements were resolved in favor of our bill. Who has ever heard of a bill of this size that did not have some changes in conference? They were all minor. Most of the changes resulted in movement toward the Senate bill.

Some of the provisions were left to be sunsetted in 4 years by the Senate bill. The House said they should be sunsetted in 10 years, so they would stay in effect for 10 years before they would have a full up-or-down review for

reauthorization. We said 4 years. So we went to conference, and we thought agreement had been reached on 7 years. After we signed the conference report—Senator KYL and others—we thought we had an agreement at 7 years. This is what we normally do in these deals, sort of split the difference when you can. And Senator LEAHY and the Democratic members had a fit. No, no, no, it had to be 4 years. It had to be 4 years. And we argued that was not appropriate.

Senator KYL and I, particularly, were involved in those discussions, being members of the conference committee. We thought 7 years was a good compromise. That was the last issue to be decided, and we totally agreed to go to 4.

That was the Senate version exactly. They wanted 7 as a compromise. The House wanted 10 in their bill. We ended up totally winning on the Senate position.

There was a dispute about delayed notification warrants. The Senate bill that passed unanimously in the Judiciary Committee and on the Senate floor said the warrant that is executed, after prior approval by a U.S. judge who has made a specific additional finding on facts presented to that judge, is justified to delay notification to the person's residence who is being served. In those circumstances, delayed notification is essential because these matters are going to involve tremendous security and are of tremendous importance to an investigation of this kind. In the Senate, we decided that investigators should report back to the judge within 7 days. After 7 days, you could then ask for an additional period of time before you notified the person whose residence had been searched.

The House bill set the delayed notification period for 180 days. They said: In a terrorist investigation, you could delay notification to the person whose house was searched for 180 days.

So we had a big brouhaha over that. We agreed to 30 days, which is far closer to the Senate version than to the House. Frankly, it didn't make a whole lot of difference because you have to have prior judicial approval to delay notice. And if you want to continue to delay notice, you have to prove that there is an existing continuing threat and danger. It is not a big deal.

This bill is about to expire, and those are the kinds of things that they say are such tremendous changes that now we should not even get an up-or-down vote. The fact that we are going to allow this bill to expire and not allow it to become law, will result in the wall going back up between the CIA and the FBI. That makes no sense.

Frankly, there are some things in here that worry me. One of the things you have to do to delay notice or to not notify someone under a 215 order is to have an agent certify that not doing would result in a threat to America. It is hard to certify that. Some people think they will just say it anyway.